

ATTACHMENT A –SAMPLE CONTRACT

MARYLAND ENERGY ADMINISTRATION SERVICE CONTRACT BASIC AGREEMENT I.D. No.

**Jane E. Lawton Conservation Loan Program Security
and Financing Documentation and Filing Support**

For

The Maryland Energy Administration

**THIS CONTRACT (“Contract”), entered into this _____ day of _____, 2013,
by and between the**

**STATE OF MARYLAND
Maryland Energy Administration
60 West Street, Suite 300
Annapolis, Maryland 21401**

hereinafter ("Administration")

and

**Contractor’s Name, Address &
Federal I.D. #
hereinafter ("Contractor")**

WHEREAS, this procurement has been determined to be a small procurement of \$25,000 or less and issued in accordance with the requirements of Category III State Procurement Regulations found in the Code of Maryland Regulations (“COMAR”), Section 21.05.07.01 et seq.); and

WHEREAS, the Administration has chosen the Contractor, and the Contractor has agreed to perform the work herein and be bound by the terms of this Contract;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained be it agreed by and between the parties hereto as follows:

ARTICLE I - NATURE OF CONTRACT

This Contract is for services the value of which shall not exceed \$25,000.00 and is generally governed by the Small Procurement Procedures established pursuant to Title 21 of the

Contract #

Code of Maryland Regulations particularly COMAR 21.05.07, and the State Finance and Procurement Article of the Annotated Code of Maryland.

ARTICLE II - SCOPE OF WORK

All work under this Contract shall be done under the supervision of the Attorney General at the Maryland Energy Administration on behalf of the Administration.

The Contractor will perform upon request the following services for the Administration:

- A. Prepare all documents necessary to secure and perfect the Administration's security interest(s) in collateral for certain loans (as designated by the Administration) made or to be made pursuant to the provisions of the Jane E. Lawton Conservation Loan Program ("Lawton Loan Program"), codified as Sections 9-20A-01 through 9-20A-10 of the State Government Article, Annotated Code of Maryland (as amended, the "Act"). Such collateral may include, but is not limited to, real property, personal property, equipment, personal and business guarantees, and fixtures.
- B. Review drafts of security agreements, subordination agreements, legal opinions and other documents made available to the Contractor by the Administration in conjunction with the loans made or to be made pursuant to the provisions of the Lawton Loan Program, and consult with the Administration regarding the substance and form of the drafts. The Contractor agrees, upon request of the Administration, to revise drafts as necessary to create final drafts of such documents.
- C. Conduct any and all necessary filing and title searches (including searches related to the Uniform Commercial Code (UCC), real property and fixture filings), subject to a sufficiency determination made by the Administration or the Office of the Attorney General at the Administration, associated with securing and perfecting the Administration's security interest(s) in collateral for certain loans (as designated by the Administration) made or to be made pursuant to the provisions of the Lawton Loan Program.
- D. File all necessary prepared documents, subject to a sufficiency determination made by the Administration or the Office of the Attorney General at the Administration, with the appropriate authorities in the appropriate jurisdictions, all in a reasonable period of time to ensure the placement of the security.
- E. The Contractor agrees to cooperate fully with the Administration and the Office of the Attorney General at the Administration in order to fulfill the Administration's needs regarding the Lawton Loan Program, and further agrees that all communications regarding the services to be provided under this Contract (in whatever form), with employees of the Administration and the Office of the Attorney General at the Administration, shall be confidential and privileged to the extent that such communications are confidential by law or otherwise required by this Contract.

Contract #

ARTICLE III - TERM

The term of this Contract shall be from the issuance of the first notice to proceed and end on June 30, 2014. No work may be initiated under this Contract until the contractor has been instructed to proceed by the Administration.

ARTICLE IV - PAYMENT

The scope of work set forth above shall be performed during the term of this Contract for a fixed amount up to but not exceeding **Twenty Five Thousand Dollars (\$25,000.00)**. The total price reflects completion of each task specified in the Scope of Work and shall include hourly rates and any fees or costs incurred by the Contractor in completion of the tasks specified in the Scope of Work. The total price shall not include any recordation or transfer taxes associated with completion of the tasks specified in the Scope of Work. The Contractor agrees to advance on an as-needed basis, reasonable amounts of funding to cover any such taxes, and shall invoice the Administration for reimbursement of such funding amounts.

The Contractor will be paid for services rendered under the Contract upon the submission of monthly invoices showing the services provided and costs incurred each month during the term of the Agreement. Payments will be made for a reasonable number of actual hours of services performed multiplied by the following rates:

Principal Attorney.....	\$_____
Associate.....	\$_____
Paralegal.....	\$_____

The Contractor's invoices shall include the names of lawyers and staff providing services, the dates of such services, the hourly rates charged, a description of the services performed, the number of hours worked, and an itemized listing of reimbursable costs and fees.

The Contractor shall submit invoices for all costs incurred in accordance with a standard format including, but not limited to, the Contractor's Federal Tax Identification Number of _____ and a Contract Identifying Number set out above. Invoices shall be due and payable within 30 days of receipt by the Administration.

To this end, the Contractor agrees to carry out the Scope of Work as described in Article III, above. In no event shall the Administration provide more than the total price to the Contractor, unless otherwise agreed to in writing by the Contractor and the Administration.

Contract #

ARTICLE V - INDEPENDENT CONTRACTOR

The Contractor (including its officers, partners, associates, paralegals, employees, or agents) is not an employee of the Administration but is an independent contractor as that term is normally defined. The Contractor shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due under the Contract. The Contractor (including its officers, partners, associates, paralegals, employees, or agents) is not an agent of the State of Maryland or the Administration and cannot commit the State of Maryland or the Administration to any expenditure of funds or enter into any contractual obligation on behalf of the State of Maryland.

ARTICLE VI – WARRANTY

The Contractor agrees to prosecute all work under this Contract continuously and diligently, and to meet all milestones contained in the Scope of Work. The Contractor shall be responsible for the supervision and inspection of, and the technical accuracy and coordination of all data and work pursuant to this Contract and shall produce a product meeting professional standards of quality and methodology.

ARTICLE VII - CHANGES

This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract (including the Contract price). Changes to the Contract may not increase the price of the Contract above \$25,000.

ARTICLE VIII- DISPUTES

Disputes arising under this Contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland, and by COMAR 21.10 Administrative and Civil Remedies. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer.

ARTICLE IX - TERMINATION FOR DEFAULT

If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the State may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the State. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

Contract #

ARTICLE X - TERMINATION FOR CONVENIENCE

The State may terminate this Contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. The State shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

ARTICLE XI – NONDISCRIMINATION IN EMPLOYMENT

The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law.

The Contractor shall comply with all applicable federal and State laws, rules and regulations and policies and procedures of the State involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, ancestry, age, gender, or physical or mental disability. The Contractor certifies that it prohibits, and covenants to continue to prohibit, discrimination on the basis of (i) political or religious opinion or affiliation, marital status, sexual orientation, race, gender, age, color, creed, ancestry, or national origin, or (ii) the physical or mental disability of a qualified individual with a disability. Upon request, the Contractor will submit information to the OAG at MEA and MEA relating to the Contractor's operations with regard to the above."

ARTICLE XII - ANTI-BRIBERY AFFIDAVIT

The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, or partners; nor any employee of the Contractor who is directly involved in obtaining contracts with the State or with any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.

ARTICLE XIII - CORPORATE REGISTRATION

Pursuant to Section 7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the Maryland Department of Assessments and Taxation, 301 W. Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in Maryland, a foreign corporation shall qualify with the Maryland Department of Assessments and Taxation.

Contract #

ARTICLE XIV - TERMINATION FOR NONAPPROPRIATION

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall be terminated automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

ARTICLE XV - MARYLAND LAW PREVAILS

The law of Maryland shall govern the interpretation and enforcement of this Contract.

ARTICLE XVI - INDEMNIFICATION

The State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this Contract.

The Contractor shall, within the limitations of applicable rules of professional conduct, indemnify and hold harmless the State from all claims, suits, judgments, expenses, actions, damages and costs (including reasonable attorneys' fees) arising out of, or resulting from, the performance of the services by the Contractor under this Contract. The Contractor shall immediately notify the OAG at MEA and MEA of any claim or suit against the Contractor relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any such claim or suit.

ARTICLE XVII - SPECIFICATIONS

All materials, equipment, supplies or services shall conform to federal and State of Maryland laws and regulations.

ARTICLE XVIII - CONFLICT OF INTEREST LAW

It is unlawful for any State officer, employee, or agent to participate personally in their official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter which they, their spouse, parent, minor child, brother, or sister, has a financial interest or to which any firm, corporation, association, or other organization in which they have a financial interest or in which they are serving as an officer, director, trustee, partner, or employee, or any person or organization with whom they are negotiating or have any arrangement concerning prospective employment, is a part, unless such officer, employee, or agent has previously complied with the provisions of Section 15-501 et seq. of the State Government Article, of the Annotated Code of Maryland.

The Contractor represents and warrants that it has no conflict of interest arising from the performance of the services under this Contract. To avoid potential conflicts of interest, the

Contract #

Contractor agrees to examine its client/matter listings on a periodic basis, to notify the OAG at MEA and MEA immediately of any potential conflict of interest, and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest. If it appears to the OAG at MEA that the Contractor is undertaking work that may present a conflict of interest, the OAG at MEA may request that the Contractor promptly remedy the situation. If requested, and to the extent permitted by the applicable rules of professional conduct, the Contractor will withdraw from representation of parties whose interests are adverse to the interests of the State. The OAG at MEA and MEA reserve the right to select another Contractor if the conflict of interest is not resolved to the satisfaction of the OAG at MEA and MEA.

ARTICLE XIX - NON-HIRING OF EMPLOYEES

No employee of the State of Maryland or any department, commission, agency or branch therefore whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall, while such employee, become or be an employee of the party or parties hereby contracting with said State of Maryland or any department, agency or branch thereof.

ARTICLE XX - ASSIGNMENT

This Contract and the monies which may become due hereunder are not assignable except with the prior written approval of the Administration's Procurement Officer.

ARTICLE XXI - CONTINGENT FEES

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bonafide employee or agent working for the contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bonafide employee or agent, any fee or other consideration contingent on the making of this Contract.

ARTICLE XXII- EXTENSION

The parties may extend this Contract, under the same terms and conditions, by a mutual agreement in writing.

ARTICLE XXIII - POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a

Contract #

lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

ARTICLE XXIV – DRUG AND ALCOHOL FREE PLACE

The Contractor certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Agreement. Specifically, the Contractor shall prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace; prohibit its employees from working under the influence of alcohol or drugs; not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program; promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if it or any of its employees has observed the violation or otherwise has reliable information that a violation has occurred; and notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

ARTICLE XXV - COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract. Each of the Contractor and subcontractors shall maintain adequate legal malpractice liability insurance coverage for itself and any such personnel, employees or agents and shall provide evidence of such coverage to the Administration upon request.
- E. During the term of the Agreement, the Contractor shall maintain professional liability insurance in the amount of \$300,000 each claim and an aggregate amount

Contract #

of not less than \$900,000 (the "Insurance Amounts") and shall maintain such insurance for the entire period in which it and each of its lawyers and staff (subject to any applicable statute of limitations) may incur any professional liability in connection with the performance or failure to perform services under the Agreement. The Contractor shall not alter or change or reduce the limit of liabilities, cancel or non-renew any of the required insurance coverage without sixty days prior written notice to MEA.

ARTICLE XXVI - MERGER

This Contract embodies the whole agreement of the parties. There are not promises, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

ARTICLE XXVII - COMPLIANCE

The Contractor shall comply with the provisions of State Finance and Procurement Article, Title 19, Annotated Code of Maryland.

ARTICLE XXVIII – PROCUREMENT OFFICER

The Procurement Officer responsible for this Contract is:

Maria Ulrich
Maryland Energy Administration
60 West Street, Suite 300
Annapolis MD 21401
(410) 260-7752
FAX (410) 974-2250

IN WITNESS WHEREOF, the parties have executed this Contract by causing the same to be signed on the day and year first above written.

CONTRACTOR'S NAME

By:

STATE OF MARYLAND
MARYLAND ENERGY ADMINISTRATION

By: Abigail Ross Hopper Esq.
Director

Contract #

Approved for Form and Legal Sufficiency

this _____ day of _____, 2013.

By: _____
Assistant Attorney General

THIS SMALL PROCUREMENT CONTRACT FORM (Rev. 03/10 AND COMAR 21.05.07.06H HAS BEEN APPROVED IN ACCORDANCE WITH COMAR 21.03.02.02 BY THE ATTORNEY GENERAL'S OFFICE OF THE MARYLAND ENERGY ADMINISTRATION. ANY ADDITIONS OR MODIFICATIONS TO, OR DELETIONS FROM, THIS FORM MUST BE APPROVED BY THE ATTORNEY GENERAL'S OFFICE BEFORE SIGNATURE OR PERFORMANCE OF ANY WORK UNDER THIS CONTRACT. UNAUTHORIZED CHANGES, MODIFICATIONS, OR DELETIONS WILL RENDER THE ADMINISTRATION'S OBLIGATIONS UNDER THIS CONTRACT VOIDABLE AT THE ADMINISTRATION'S ELECTION.